HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 1

GENERAL, LEGAL, AND ADMINISTRATIVE PROVISIONS FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 53

RULES OF PRACTICE FOR VARIANCES

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Historical Note: Chapter 53 of title 12 is based upon chapter 104 of

the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff. 7/11/74; am 6/7/76; am 8/23/79; R 7/12/82]

SUBCHAPTER I –GENERAL

§12-53-1 Purpose and scope. This chapter contains rules of practice for administrative proceedings to grant variances and other relief under the law. [Eff 7/12/82; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-2 Effect of variances. All variances granted pursuant to this chapter shall have only future effect. The director may decline to entertain an application for a variance on a subject or issue for which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the appeals board until the completion of the proceeding. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-3 Public notice of a granted variance. (a) Every final action granting a variance shall be published for general circulation in the State at least once within three weeks following the action. Every final action shall specify the alternative to the standard involved which the particular variance permits.

(b) The applicant shall pay for the publication cost of publishing the granted variance notice as required in section 12-56-3 prior to the public notice being published. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-4 Form of documents. (a) No particular form is prescribed for an application, which may be filed in proceedings under this chapter. Any application and supporting documentation, if any shall be clearly legible and one original and one copy shall be filed. The original shall be typewritten, and the copy may be carbon, printed, or processed. An application shall be considered complete when it contains comprehensive information to satisfy the requirements of sections 12-53-6 or 12-53-7.

(b) Each application or any other paper which is filed in proceedings under this section shall be signed by the person filing or an attorney, or by any other authorized representative.

Applications.

(1) If an application filed pursuant to sections 12-53-6 or 12-53-7 is incomplete or does not conform to the applicable section, the director may deny the application.

(2) Notice of the denial of an application shall be given to the applicant within ninety days of the director’s receipt of the application packet.

(3) A notice of denial shall include a brief statement of the grounds for the denial.

(4) A denial of an application shall be without prejudice to the filing of another application.

(5) If an application is accepted, the applicant will be so notified by telephone, facsimile transmission, or letter within ninety days of the submission of the complete application to the director. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

SUBCHAPTER 2--APPLICATION FOR VARIANCES AND OTHER RELIEF

§12-53-6 Variance and other relief for inability to comply. (a) Any employer, or class of employers, desiring a variance from a standard, or portion of it, for inability to comply with any rule shall file a written application with the director.

(b) All applications filed pursuant to subsection (a) above shall be in

writing and shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the rule or portion from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the rule or portion of it by its effective date and a detailed statement of the reasons;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazards for which the standards provide protection;

(6) A statement of when the applicant expects to be able to comply with the standard and what steps has been taken and will be taken, with specific dates where appropriate, to achieve compliance with the rule;

(7) A statement of the facts the applicant would present to establish that:

(A) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to achieve compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(B) All available steps to safeguard employees against the hazards for which the standard provides protection are being taken; and

(C) An effective program is in operation for achieving compliance with the standard as quickly as practicable;

(8) A certification that the applicant has informed employees of the application by:

(A) Giving a copy to their designated representatives;

(B) Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of the summary, the posting of the application itself); and

(9) A description of how affected employees have been informed of the application and of their right to petition the director for a hearing; and

(10) When the requested variance would be applicable to employment or places of employment in more than one state and concerns a Hawaii OSH standard or portion thereof, identical in requirements and substance to a federal standard, the applicant shall:

(A) Identify the identical Federal standard;

(B) Certify whether or not the applicant has filed for such a variance, on the same facts, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor; and

(C) Certify whether or not any citations for violations of the identical federal standard, or portion thereof, have been issued to the applicant by the federal government, and, if citations have been issued, copies of the citations shall be included.

(c) Interim order.

(1) A written application may also be made for an interim order to be effective until a decision is rendered for the variance filed previously or concurrently. An application for an interim order shall include statements of fact and arguments as to why the order should be granted. The director or the administrator may rule ex parte upon the application for an interim order.

(2) If an application for an interim order is denied, the applicant shall be given notice of the denial within forty-five days of the filing of the complete application for the interim order which shall include a brief statement of the grounds for denial.

(3) If an interim order is granted, a copy of the order shall be served upon the applicant.

(4) The employer shall give notice to affected employees, by the same means used to inform them of an application for a variance, that an interim order has been granted.

(d) A variance and other relief for inability to comply may be granted for up to six months and can be renewed once for an additional six months. A written request for an extension shall be filed not less than thirty days prior to the expiration date of the original variance and shall include the reason(s) for the extension request with supporting documentation if any. If an interim order is granted, the duration of the interim order is not included in the six-month period for the variance. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-7 Variances and other relief for use of alternate safety practices, etc. (a) Any employer, or class of employers, desiring a variance for use of alternative safety procedures shall file a written application with the director.

(b) An application filed pursuant to subsection (a) above shall be in writing and shall include:

(1) The name and address of the applicant;
(2) The address of the place or places of employment involved;
(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;
(5) A certification that the applicant has informed employees of the application by:
    (A) Giving a copy to their designated representatives;
    (B) Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of the summary, the posting of the application itself); and
    (C) Other appropriate means.
(6) A description of how employees have been informed of the application and of their right to petition the director for a hearing; and
(7) When the requested variance would be applicable to employment or places of employment in more than one state and concerns a Hawaii OSH standard or portion thereof, identical in requirements and substance to a federal standard, the applicant shall:
    (A) Identify the identical federal standard;
    (B) Certify whether or not the applicant has filed for such a variance, on the same facts, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor; and
    (C) Certify whether or not any citations for violations of the identical federal standard, or portion thereof, have been issued to the applicant by the federal government. If citations have been issued, copies of the citations shall be included.

(c) Interim order.

(1) A written application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include statements of fact and arguments as to why the order should be granted. The director or the administrator may rule ex parte upon the application for an interim order.
(2) If an application for an interim order is denied, the applicant shall be given notice of the denial, within forty-five days of the filing of the complete application for the interim order which shall include, or be accompanied by, a brief statement of the grounds for the denial.
(3) If an interim order is granted, a copy of the order shall be served upon the applicant.
(4) The employer shall give notice to affected employees, by the same means used to inform them of an application for a variance, that an interim order has been granted. [Eff 7/12/82; am 8/15/87;

am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-8 Modification, revocation, and renewal of rules and orders. **(a)** An employer or an affected employee may apply in writing to the director for a modification or revocation of a rule, standard, or order issued under sections 12-53-6 or 12-53-7. The application shall contain:

(1) The name and address of the applicant;
(2) A description of the relief, which is sought;
(3) A statement setting forth with particularity the grounds for relief;
(4) Certification, if the applicant is an employer, which the applicant has informed affected employees of the application by:
    (A) Giving a copy to their designated representatives;
    (B) Posting at the place where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
    (C) Other appropriate means.
(5) A certification, if the applicant is an affected employee, that a copy of the application has been furnished to the employer; and
(6) Any request for a hearing under subchapter 3 of this chapter.

(b) The director may modify or revoke a rule or order issued under sections 12-53-6 or 12-53-7. When this occurs, the director shall publish a notice of this for general circulation in the State of Hawaii at least once within a three week period following the action, thereby affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take other actions to give notice to affected employees. Any request for a hearing shall include a short and plain statement of:

(1) How the proposed modification or revocation would affect the requesting party; and
(2) What the requesting party would seek to show on the subjects or issues.

(c) Any final rule or order issued under sections 12-53-6 or 12-53-7 may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-9 Action on applications. **(a)** Defective applications.

(1) If an application filed pursuant to sections 12-53-6 or 12-53-7 is incomplete or does not conform to the applicable section, the director may deny the application.
(2) Prompt notice of the denial of an application shall be given to the applicant within ninety days of the director’s receipt of the application packet.
(3) A notice of denial shall include a brief statement of the grounds for the denial.
(4) A denial of an application shall be without prejudice to the filing of another application.

(b) Adequate applications.

(1) If an application has been approved pursuant to sections 12-53-6 or 12-53-7, the director shall publish for general circulation in the State, at least once within three weeks following the filing of an application, a notice of the filing of an application.
(2) A notice of the filing of an application shall include:
    (A) The terms or an accurate summary of the application;
    (B) A reference to the section of the law under which the application has been filed;
    (C) An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
    (D) Information to affected employers and employees of any right to request a hearing on the application.
(3) Applicants will be notified by telephone, facsimile transmission or

letter within ninety days of the submission of a complete application of its acceptance or denial. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-10 Requests for hearing on applications. (a) Within the twenty day time period allowed by a notice of the filing of an application, any affected employer or employee may file with the director, a written request for a hearing on the application.

(b) A request for a hearing filed pursuant to subsection (a) above shall include:

(1) A concise statement of facts showing how the employer or employee would be affected by the relief for which the application was made;

(2) A specification of any statement or representation in the application which is being challenged, and a concise summary of the evidence rebutting any statement or representation made within the application with specific reference to the statement or representation being challenged; and

(3) Any views or arguments on any issue of fact or law presented. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-11 Consolidation of proceedings. The director may consolidate or contemporaneously consider two or more proceedings, which involve the same or closely related issues. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

SUBCHAPTER 3--HEARINGS

§12-53-12 Notice of hearing. (a) Upon request for a hearing pursuant to this chapter, the director shall serve reasonable notice of hearing.

(b) A notice of hearing shall include:

(1) The time, place, and nature of the hearing;

(2) The legal authority under which the hearing is to be held;

(3) A specification of issues of fact and law; and

(4) A designation of a hearing examiner appointed by the director to preside over the hearing.

(c) A copy of a notice of hearing shall be referred to the hearing examiner together with the original application and any written request for a hearing. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-13 Manner of service. Service of any document upon any party may be made by personal delivery, or by mailing to the last known address of the party. The person serving the document shall certify to the manner and the date of the service. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-14 Hearing examiners; powers and duties. (a) A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the powers to:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receives relevant evidence;

(3) Provide for discovery and to determine its scope;

(4) Regulate the course of the hearing and the conduct of the parties and their counsel;

(5) Consider and rule upon procedural requests;

(6) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) Make or to cause to be made, an inspection of the employment or place of employment involved;

(8) Make decisions in accordance with this chapter and chapters 91 and 396, HRS; and

(9) Take any other appropriate action authorized by chapters 91 and 396, HRS.

(b) Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) When a hearing examiner disqualifies himself or herself to preside over a particular hearing, the hearing examiner shall withdraw by notice on the record to the director.

(d) Any party who believes a hearing examiner should be disqualified to preside, or to continue to preside, over a particular hearing, may file with the director a motion to disqualify and remove the hearing examiner. A motion for disqualification shall be supported by affidavits setting forth the alleged grounds for disqualification. The director shall rule upon the motion.

(e) Unruly or obstinate conduct at any hearing shall be ground for exclusion from the hearing.

(f) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(g) On any procedural question not regulated by this chapter or chapters 91 and 396, HRS, a hearing examiner shall be guided to the extent practicable by any pertinent provision of the Hawaii Rules of Civil Procedure. [Eff 7/12/82; am 8/15/87; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-15 Prehearing conferences. (a) Upon a hearing examiner's own motion or the motion of a party, the examiner may direct the parties or their counsel to meet with the examiner for a prehearing conference to consider:

(1) Simplification of the issues;
(2) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
(3) Stipulation, admissions of fact, and contents and authenticity of documents;
(4) Limitations of the number of parties and of expert witnesses; and
(5) Other matters to expedite the disposition of the proceeding and to assure a just conclusion.

(b) The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. The order when entered controls the subsequent course of the hearing unless modified at the hearing to prevent injustice. [Eff 7/12/82; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-16 Consent findings and rules or orders. (a) At any time before the reception of evidence in any hearing or during any hearing, a reasonable opportunity may be given to permit the negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of the opportunity shall be at the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement, which will result in a just disposition of the issues.

(b) Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;
(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
(3) A waiver of any further procedural steps before the hearing examiner and the director or designee; and
(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the presiding hearing examiner for consideration; or

(2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) In the event an agreement containing consent findings and rule or order is submitted within the time allowed, the presiding hearing examiner may accept the agreement by issuing a decision based upon the agreed findings. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-17 Discovery. (a) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(b) Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth:

(1) The reasons why the deposition should be taken;

(2) The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(3) The name and address of each witness; and

(4) The subject matter concerning which each witness is expected to testify.

(c) The notice, which the presiding hearing examiner may order, shall be given by the party taking the deposition to every other party.

(d) Each witness testifying upon deposition shall be sworn, and the parties not calling the witness shall have the right of cross-examination. The questions and answers, together with all objections made, shall be reduced to writing, read to and subscribed by the witness, and certified by the officer before whom the deposition is taken. The officer shall seal the deposition, with two copies in an envelope and send it by registered mail to the presiding hearing examiner. Subject to objections to the questions and answers as noted at the time of taking the deposition, the deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition or who had due notice. No part of a deposition shall be admitted in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(e) Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-18 Hearings. (a) Except as may be ordered otherwise by the presiding hearing examiner, the party applicant for relief shall proceed first at a hearing.

(b) The party applicant shall have the burden of proof.

(c) A party shall be entitled to present the case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding hearing examiner shall exclude evidence, which is irrelevant, immaterial, or unduly repetitious.

(d) The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(e) If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit the scope, the party shall state briefly the grounds for the objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(f) Formal exception to an adverse ruling is not required.

(g) Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the department by reason of its functions is presumed to be expert; provided, that the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(h) The hearing shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-19 Decisions of hearing examiners. (a) Within ten days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, rule, or order, together with a supporting brief expressing the reasons for the proposals. The proposals and brief shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) Within ninety days after the filing of proposed findings of facts, conclusions of law, rule, or order, the presiding hearing examiner shall make and serve the decision upon each party. The decision of the hearing examiner shall include:

(1) A statement of findings and conclusions with reasons and based upon each material issue of fact, law, or discretion presented on the record; and

(2) The appropriate rule, order, relief, or denial.

The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. [Eff 7/12/82; am 8/15/87; am 2/14/00; am 12/29/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-20 Appeals. Within twenty days after service of a decision of a presiding hearing examiner, any party may file with the hearings examiner a written motion for reconsideration. Any additional supporting documentation that the requestor would like to submit shall be submitted along with the request for reconsideration. A reconsideration hearing determination decision will be issued within ninety days of the reconsideration hearing.

Within twenty days after service of the decision of a reconsideration hearing, any party may file a written notice of contest with the director. Upon receipt, the director shall advise the appeals board of any notice of contest. [Eff 7/12/82; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-21 Transmission of record. If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the director. The record shall include: the application, any request for hearing, motions and requests filed in written form, rulings, the transcript of the testimony taken at the hearing, together with the exhibits admitted to evidence, any documents or papers filed in connection with prehearing conferences, proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and exceptions, statements of objections, and briefs in support, as may have been filed in the proceeding. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-22 Decision of the director. If exceptions to a decision of a hearing examiner are taken pursuant to section 12-53-20, the director shall consider them, together with the record references and authorities cited in support, and any objections to exceptions and supporting reasons, then make a decision. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the rule or order contained in the decision of

the presiding hearing examiner, and shall include a statement of reasons or basis for the actions taken on each exception presented. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

SUBCHAPTER 4--SUMMARY DECISIONS

§12-53-23 Motion for summary decision. (a) Any party may, at least thirty days before the date fixed for any hearing under subchapter 3 of this chapter, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within ten days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding hearing examiner may, at his or her discretion, set the matter for argument and call for the submission of briefs.

(b) The filing of any documents pursuant to subsection (a) above shall be with the hearing examiner, and copies of any documents shall be served in accordance with section 12-53-13.

(c) The hearing examiner may grant the motion pursuant to section 12-53-24 if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(d) Affidavits shall set forth the facts as would be admissible in evidence in a proceeding under chapter 91, HRS, and shall show affirmatively that the affiant is competent to testify. When a motion for summary decision is made and supported as provided in this section a party opposing the motion may not rest upon the mere allegations or denials of his or her pleading but shall respond by setting forth specific facts showing that there is a genuine issue of fact for the hearing.

(e) Should it appear from the affidavits of a party opposing the motion that, for reasons stated, facts essential to justify the opposition cannot be presented, the hearing examiner may deny the motion for summary decision, order a continuance to permit affidavits to be obtained or discovery to be had, or make another order.

(f) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the director unless the hearing examiner certifies in writing that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the director, or designee, shall so order. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-24 Summary decision. (a) Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue an initial decision to become final twenty days after service unless within the period of time any party has filed written exceptions to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any objections to the exception and any supporting reasons. The director, after consideration of the exceptions and any supporting briefs filed and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(b) An initial decision and a final decision made pursuant to subsection (a) above shall include a statement of:

(1) Findings and conclusions, and the reasons or basis on all issues presented; and

(2) The terms and conditions of the rule or order made.

(c) A copy of an initial decision and a final decision under this section shall be served on each party.

(d) Where a genuine material question of fact is raised, the hearing examiner shall set the case for an evidentiary hearing in accordance with subchapter 3 of this chapter. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

SUBCHAPTER 5--EFFECT OF INITIAL DECISIONS

§12-53-25 Appeal of a hearing examiner's decision. A hearing examiner's decision under this chapter shall not be operative unless it becomes final pursuant to section 12-53-19(b). [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-53-26 Finality for appeals board review. Only a decision by the director shall be final department action for purposes of appeals board review. A decision by a hearing examiner, which becomes final for lack of appeal is not final department action for purposes of appeal board review or judicial review, or both. [Eff. 7/12/82; am 8/15/87] (Auth: HRS §396-4) (Imp: HRS §396-4 and §396-11)